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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/023,333
Filing Date: December 12, 2001
Appellant(s): TUDOR ET AL.

MAILED
JUL 10 2007
Group 3700

Thomas D. Helmholdt
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 26, 2006 (with the corrected Summary of Claimed Subject Matter filed June 22, 2007) appealing from the Office action mailed May 23, 2005.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

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The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,138,872	Brennan et al.	10/2000
5,478,150	Keller et al.	12/1995
5,397,180	Miller	03/1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims (headings as listed by appellant):

ISSUE 1

Claims 4, 6 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Brennan et al. The Brennan et al.

(Brennan) reference discloses a dispensing apparatus comprising: a hollow tubular housing 16 including a nozzle-retaining annular shoulder surface 18 (receiving 12); an insert 12 including an aperture 14; and a static mixer 26 (76 in drawing figures), as claimed. The shoulder "surface" is clearly illustrated in Fig. 3A (interior surface of 18), and the insert 12 would clearly engage that surface. Claim 4 does not specify the insert as engaging the shoulder.

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ISSUE 2

Claims 4, 5, 8-10, 12-17 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller. The Miller reference discloses a dispensing apparatus comprising: a hollow tubular housing/tubular member 37 including a nozzle-retaining/insert-retaining annular shoulder surface 44 (receiving 43, Fig. 4); and an insert 40 including a flange/first end 43, as claimed.

ISSUE 3

Claims 1-6, 8-18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brennan, Miller and Keller et al.

Re claims 8 and 9, although the insert of the Brennan dispensing apparatus does not include a flange, as claimed, attention is directed to the Miller reference which discloses an analogous dispensing apparatus which further includes an insert 40 having a flange 43. Therefore, in consideration of Miller, it would have been obvious to one of ordinary skill in the dispensing apparatus art to associate a flange with the Brennan insert in order to facilitate material flow. Furthermore, Miller teaches that such a flanged insert includes a cylindrical surface portion 41,42.

Re claim 1, the Brennan tubular nozzle member 16 further includes a tip portion 18 having a shoulder (engaged by 26), a conical nozzle bore (Fig. 3A), and a main body 20. Although the tip portion of the Brennan nozzle member does not include stepped reductions, as claimed, attention is directed to the Keller et al. (Keller) reference which discloses an analogous nozzle member which further includes a tip portion 18 having stepped reductions (Fig. 7). Therefore, in consideration of Keller, it would have been obvious to one of ordinary skill in the tubular nozzle art to associate stepped reductions with the Brennan tip portion in order to facilitate length adjustment.

(10) Response to Argument

ISSUE 1

Appellant argues at page 6 of the brief Brennan does not disclose a tubular housing having an annular shoulder surface because the insert is conical. The examiner can not agree. Brennan clearly illustrates an annular shoulder surface in Fig. 3A which closely resembles the annular shoulder surface disclosed by appellant (indeed both appellant's and Brennan's tubular housings are disclosed as prior art). While the insert 12 in Brennan is conical or non-linear, claim 4 is drafted too broadly to distinguish the structure disclosed by Brennan. Claim 4 does not specify that the annular shoulder portion of

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the nozzle-retaining surface is engaged by the insert. This feature is the substantive difference between appellant's claims 4 and 9. In this regard, claim 9 recites structure (i.e. a flange) which requires the annular shoulder portion of the nozzle-retaining surface to be engaged by the insert. Claim 4 is broader than claim 9. Claim 9 has not been rejected as being anticipated by Brennan. Appellant further argues at page 6 of the brief the static mixer 26 in Brennan can not function to trap the insert 12 in the tubular housing 24. The examiner can not agree as the insert 12 could not be removed from the tubular housing 24 when the static mixer is present therein. Therefore, the structure disclosed by Brennan is capable of performing the "trapping" function recited in claim 6. Appellant argues at pages 6-7 of the brief Brennan does not disclose an interchangeable insert as recited in claim 21. The examiner can not agree as the insert 12 in Brennan could be removed when the static mixer 26 is not present in the tubular housing 24. Therefore, the insert 12 of Brennan is interchangeable (i.e. able to be interchanged). Appellant argues at page 7 of the brief Brennan does not disclose trapping a flange of an insert between a nozzle-retaining annular shoulder surface and a static mixer of a tubular housing. The examiner agrees, however, this

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subject matter is not present in any of the claims rejected as being anticipated by Brennan.

ISSUE 2

Appellant argues at pages 7-8 of the brief Miller has been applied "for the first time" to reject the claimed subject matter. While not an appealable issue, the examiner will again address this concern. As previously pointed out in the Advisory action mailed January 05, 2006, claims 4-20 were rejected as being anticipated by Miller in the Office action mailed April 29, 2002 (see paragraph 7). In response, appellant added new matter to the claims which removed the applicability of Miller thereto. Appellant has since removed the new matter from claims which action places them in a form and of a scope similar to those considered in the noted Office action. Ultimately, claims 4, 9 and 14 were amended, in addition to adding the noted new matter, between the Office actions of April 29, 2002 and May 23, 2005. Therefore, the May 23, 2005 Office action was properly made final as appellant was given "sufficient opportunity" to address the grounds of rejection based upon Miller. Appellant argues at page 8 of the brief the tube 2 in Miller is not single piece. However, appellant fails to indicate what bearing this statement has on the instant appeal. The term "single piece" has been removed from the appealed claims. Therefore, this

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argument is moot. Appellant argues at pages 8-10 of the brief Miller does not disclose the claimed features and restates the claim language (most of which is repetitious) in support thereof. The examiner can not agree. Direct correspondence between the structure recited in the appealed claims and the Miller disclosure has been specified supra. While the examiner acknowledges that the insert 40 in Miller is "molded within" the hollow tubular housing/tubular member 37, as argued, such disclosure is not distinguished by the functional implications associated with the claim terms "insert" and "interchangeable". As correctly noted by appellant, the insert 40 in Miller includes a flange 43 which "abuts" the nozzle-retaining annular shoulder surface (at 44) of the tubular housing 37. If the tubular housing 37 and the insert 40 were a single piece, as apparently implied by appellant's argument, Miller would not have described these two elements as abutting. Further in this regard, the tubular housing 37 and the insert 40 are made of dissimilar materials. Moreover, the insert 40 includes two consecutive cylindrical passages extending therethrough (elements 41 and 42) which are of progressively smaller diameters. These passages together form a non-linear inner surface.

ISSUE 3

Appellant argues at page 12 of the brief Miller does not teach trapping the flange of an insert against a nozzle-retaining/insert-retaining annular shoulder surface. The examiner can not agree. As correctly pointed out by appellant, Miller teaches trapping an insert flange 43 between a nozzle end wall 44 and a nozzle-retaining/insert-retaining annular shoulder surface (of 37). Furthermore, the nozzle 45 contains a static mixer 48. Therefore, the flange 43 is trapped by the static mixer 48. In any event, the insert 12 disclosed by Brennan is clearly directly trapped by the static mixer 26 as discussed supra. Appellant argues at pages 12-14 of the brief perceived deficiencies of the Miller and Brennan disclosures individually. This argument merely restates that which was fully addressed supra. Appellant argues at page 13 of the brief Keller does not teach use of an insert. However, appellant has not indicated what bearing this statement has on the instant appeal. The examiner does note, however, that Keller teaches providing stepped reductions (Fig. 7) on a tip portion 18 of a tubular nozzle member 14. Appellant argues at pages 14-15 of the brief Miller discloses a "multi-piece" dispensing nozzle (emphasis original). The examiner can not agree. The Miller disclosure has again been reviewed, but no mention of the nozzle insert 40-43 being multi-piece was found therein. Indeed, appellant has

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not pointed out where in the Miller disclosure this subject matter is taught. Appellant's repetitious arguments at pages 15-18 of the brief have been fully considered and have been previously addressed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Robert M. Fetsuga

Conferees:

Gregory L. Huson



Eric S. Keasel

